

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
03/22/2022 Meeting

Members:

Wolfgang Buechler, Chairman
David Kantor
Jonathan Welka
Nicholas Graves
Dennis Welka, Secretary

The ZBA open regular meeting was called to order by Mr. Wolfgang Buechler at 7:00 PM. ZBA members Wolfgang Buechler, David Kantor, Jonathan Welka, Nicholas Graves, and Dennis Welka were present at the meeting. Mr. Theodore Jeorg, Esq., Pendleton Town Prosecutor, was also present.

PUBLIC HEARINGS:

Magnuszewski, Dan – 5549 Tonawanda Creek Rd., Pendleton, NY

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 40 ft. x 100 ft. (4000 SF) accessory structure where maximum allowed accessory structure size is 2000 SF per Town Code §247-34.E.(3). There is an existing 24 ft. x 50 ft. (1200 SF) accessory structure on site. Area variance requested is 3200 SF aggregate accessory structure size variance. Property is 8.8 acres and zoned R2 Medium-density Residential.

Attending the hearing were:

- Mr. Magnuszewski, property owner
- Mr. McNamara, site contractor
- Mr. Gillet, neighbor
- Mr. Trowse, neighbor

Mr. Magnuszewski stated that the accessory structure would be for storage of his car collection and for other recreational uses.

Mr. McNamara stated that the proposed building would have a height of 20 ft. and be sited at a front setback of approximately 490 ft. It was planned that storm water would be redirected to existing ditches, depending on further study of the property. Mr. McNamara also mentioned that numerous trees and plantings would be brought into the property, with some mitigating neighbor's views of the proposed structure.

Mr. McNamara further detailed some of the improvements planned for the property, including expansion of the primary residence, installation of a pool, and retention of the existing horse barn.

Neighbor comments included:

- Interest in the scope of the project
- Views of the structure
- Water drainage
- Noise or nuisance from any activity related to the cars in the new structure

Based on a review of historical ZBA minutes, Mr. Buechler provided information about prior ZBA decisions granting variances for large accessory structures and the context in which they were granted.

The public hearing was closed at approximately 7:17 pm.

Allen, Eric – 7101 Townline Rd., Pendleton, NY

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 21 ft. x 36 ft. garage (756 SF) at a side yard setback of 3 ft. and a front yard setback of 89 ft. where the minimum side yard setback is 15 ft. per Town Code §247-10.E and the minimum front yard setback is 100 ft. per Town Code §247-10.D.(1). Area variances sought are 12 ft. side yard setback variance and 11 ft. front yard setback variance. Property is 100 ft. x 300 ft. and zoned R1 Low-density Residential.

Owner plans to convert current garage into living space and build a detached garage. Square footage of existing house is 1178 SF.

The Board inquired about alternative plans that might not require a variance or require a reduced variance.

The public hearing was closed at approximately 7:30 pm.

Graham, Jacob –Property SBL 137.00-1-1.112 on Lockport Rd., Pendleton, NY

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 40 ft. x 80 ft. retail structure at a 60.1 ft. front setback in a Special Light Industrial (SLI) District where a minimum 100 ft. front setback is required per Town Code §247-15.H. Variance sought is 39.9 ft. front setback variance. Property is 1,705 ft. x 65.43 acres and zoned SLI Special Light Industrial.

Owner stated that he wants property for a retail shop providing lawncare and agricultural implements and a large composting facility.

The public hearing was closed at approximately 7:42 pm.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by David Kantor to accept the minutes of the 02/22/2022 meeting, and was seconded by Nick Graves. All voted in favor.

Specific Board Deliberation Actions:

Magnuszewski, Dan - 5549 Tonawanda Creek Rd.

The ZBA board reviewed the Area Variance and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance could create an undesirable change to the neighborhood and nearby properties. Placement of the structure at a very deep front yard setback and use of additional trees and plantings as visual barriers would mitigate some of this impact.

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build to code.

- c. Is the requested variance substantial?

It was agreed that the requested variance was substantial. The Board chose to consider the existing structure (horse barn) as a stable and remove it from the accessory size computation. Granting a reduced variance would reduce the impact on the neighborhood.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would not have an adverse effect on the physical or environmental conditions of the neighborhood.

- e. Is the applicant's difficulty self-created?

The board felt that the applicant's difficulty was self-created.

A motion was made by Mr. D. Welka and seconded by Mr. J. Welka to grant a variance of 2000 SF. Messrs. D Welka and J Welka voted for the motion. Messrs. Buechler, Kantor, and Graves voted against. The motion failed.

A motion was made by Mr. Kantor and seconded by Mr. Graves to grant a variance of 3300SF with a one-year time limit on completion of the project. Voting in favor were Messrs. Buechler, Kantor and Graves. Voting against were Messrs. D Welka and J. Welka.

Allen, Eric - 7101 Townline Rd.

The ZBA board reviewed the Area Variance and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance may create an undesirable change to the neighborhood and nearby properties . There were drainage concerns

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solutions might require removal of a tree.

- c. Is the requested variance substantial?

It was agreed that the requested variance was substantial, especially the side lot variance requested.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would have an adverse effect on the physical or environmental conditions of the neighborhood if drainage issues were not resolved.

- e. Is the applicant's difficulty self-created?

The board felt that the applicant's difficulty was self-created.

A motion was made by Nick Graves and seconded by Dave Kantor to table the decision so the applicant could return with more detailed plans regarding his proposed project. All voted in favor of tabling the decision.

Graham, Jacob - Property SBL 137.00-1-1.112 located on Lockport Rd.

The ZBA board reviewed the Area Variance and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not create an undesirable change to the neighborhood and nearby properties .

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build to code, however, in doing so would create other problems due to DEC constraints. Variance would be compliant with Light Industrial zoning codes.

- c. Is the requested variance substantial?

It was agreed that the requested variance was not substantial. The variance would not be required if the property were zoned LI Light Industrial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would not have an adverse effect on the physical or environmental conditions of the neighborhood.

- e. Is the applicant's difficulty self-created?

The board felt that the applicant's difficulty was not totally self-created because of DEC constraints on the property.

A motion was made by Dennis Welka and seconded by Nick Graves to grant the variance as requested as long as the property use is restricted to the uses permitted by right for an LI Light Industrial District. The project was given a time limit of 18 months.

Messrs. Kantor, Graves, D. Welka, and J. Welka voted in favor of granting the variance. None voted against. Mr. Buechler had recused himself from the hearing, deliberation, and vote.

David Grant - 7199 Pendale Circle (public hearing held on 22 February 2022)

Owner wishes to erect a 12 ft. x 16 ft. shed and place it 7 ft. from the side property line and 110 ft. from the front property line. Town Code requires a minimum of 15 ft. side yard setback and a minimum of 150 ft. front yard setback

The ZBA board reviewed the Area Variance and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would create an undesirable change to the neighborhood and nearby properties, especially the side lot variance requested and planned building size.

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build to code in another location that does not block the view of the pond and is not contrary to development covenants.

- c. Is the requested variance substantial?

It was agreed that the requested variance was substantial in terms of front and side lot variances.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that it was unknown if the variance would have an adverse effect on the physical or environmental conditions of the neighborhood.

- e. Is the applicant's difficulty self-created?

The board felt that the applicant's difficulty was self-created.

A motion was made by Dennis Welka and seconded by Dave Kantor to grant a reduced front yard setback of 30' and deny the side lot setback variance, with a one-year time limit on completion of the project.

Messrs. Kantor, D. Welka, Graves and J. Welka voted in favor of the motion. Mr. Buechler voted against the motion.

Sawma, Brian and Jamie - 4075 Mapleton Rd. (public hearing held on 22 February 2022)

Applicants wish to construct a new single-family home at a setback of 45 ft. from Townline Rd. where minimum setbacks from both streets on corner lots is 75 ft. per Town Code §247-26.A and §247-10.D.(1). Area variance sought is 30 ft. corner lot setback variance. Property is 160 ft. x 296 ft. and zoned R1 Low-density Residential

The Board discussed several options regarding the property and its character as a corner lot.

The ZBA board reviewed the Area Variance and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not create an undesirable change to the neighborhood and nearby properties .

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solutions would be to build to code. The applicant offered and alternate solution to build at a 55 ft. setback.

- c. Is the requested variance substantial?

It was agreed that the alternative variance was not substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would not have an adverse effect on the physical or environmental conditions of the neighborhood.

e. Is the applicant’s difficulty self-created?

The board felt that the applicant’s difficulty was self-created.

A motion was made by Mr. D. Welka and seconded by Mr. Graves to grant an alternate variance of 20 ft. giving the structure an allowed setback of 55 ft.

All members voted in favor of the motion.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: Proposed revisions to the Town Code

Miscellaneous ZBA Topics:

- 1. The next scheduled meeting will be on Tuesday, 04/26/22 at 7:00 pm.

A motion was made by Nick Graves to adjourn the meeting at 9:40 pm, and seconded by Dennis Welka. All voted in favor.

Submitted for:

Dennis J. Welka
Secretary

Attachments:

Town of Pendleton Public Hearing Request for Jacob Graham
 Town of Pendleton Notice of Public Hearing for Jacob Graham
 Town of Pendleton Denial of Building Application for Jacob Graham
 Public Hearing Mailing List for Jacob Graham
 Site Survey of Property for Jacob Graham

Town of Pendleton Public Hearing Request for Eric Allen
 Town of Pendleton Notice of Public Hearing for Eric Allen
 Town of Pendleton Denial of Building Application for Eric Allen
 Public Hearing Mailing List for Eric Allen
 Site Survey of Property for Eric Allen

Town of Pendleton Public Hearing Request for Dan Magnuszewski
Town of Pendleton Notice of Public Hearing for Dan Magnuszewski
Public Hearing Mailing List for Dan Magnuszewski
Site Survey of Property for Dan Magnuszewski
Property analyses from Mr. Buechler

Town of Pendleton Public Hearing Request for David Grant
Town of Pendleton Notice of Public Hearing for David Grant
Town of Pendleton Denial of Building Application for David Grant
Public Hearing Mailing List for David Grant
Site Survey of Property for David Grant

Town of Pendleton Public Hearing Request for Brian Sawma
Town of Pendleton Notice of Public Hearing for Brian Sawma
Town of Pendleton Denial of Building Application for Brian Sawma
Public Hearing Mailing List for Brian Sawma
Site Survey of Property for Brian Sawma

Sign-in Sheet